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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,373	11/03/2003	Dwayne Henry	85162-202 RWD	1135
23529	7590	09/29/2005	EXAMINER	
ADE & COMPANY 1700-360 MAIN STREET WINNIPEG, MB R3C3Z3 CANADA			MARSH, STEVEN M	
		ART UNIT	PAPER NUMBER	3632

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/698,373	HENRY, DWAYNE	
	Examiner Steven M. Marsh	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 July 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,5-10 and 21-32 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 5-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 21-32 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the second office action for U.S. Application 10/698,373 for a Holder for Grease Gun filed on November 3, 2003 Claims 1, 5-10, and 21-32 are pending.

#### ***Election/Restrictions***

Newly submitted claims 21-32 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicant is claiming a grease gun holder in combination with a grease gun, when a grease gun holder alone was originally claimed. In addition to the added element of a grease gun, claim 21 contains the additional limitation that the body of the grease gun is above the tray. Claim 28 contains limitations to the holder, which are different than the holder originally claimed in claim 1.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-32 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,224,720 to Hain. Hain discloses a holder that can hold a grease gun with a wall mount (13) for securement to an upright surface and a clip device (17) mounted on the wall mount for securely receiving a tubular body. There is a nozzle holder (upper portion of 13 containing holes 14) supported on the wall mount that can secure the nozzle of a grease gun, and a tray (16) supported on the wall mount below the nozzle holder and clip in respective vertical alignment with each of the nozzle holder and clip device. The tray has side walls that form a receptacle that can contain a liquid therein and the nozzle holder has a cradle that lies parallel to the wall mount. The wall mount comprises a mounting plate and the clip device is spaced outwardly from the mounting plate with the nozzle holder located directly adjacent the mounting plate. The clip device has a pair of flanges spaced apart from one another to define a spring clip and there is an interior profile for conforming to a shape of a cylindrical body. The mounting plate has apertures (15) therein and supports the clip device at one end and the tray projects outwardly from the plate at an opposite end from the clip device.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

*SM*

Steven M. Marsh

September 22, 2005

*Ramon O. Ramirez*  
RAMON O. RAMIREZ  
PRIMARY EXAMINER  
ART UNIT 355-~~3632~~